

FOR MERCHANTS

Please obtain a Checks Package from the Hot Check Program (or download the file from our website, 25thda.org).

1. You will need to provide the program with the original check that has been returned from the bank and has the proper bank processing stamps:
NSF/ACCOUNT CLOSED/INSUFFICIENT FUNDS
2. The check must have been accepted by you or your employee at a location in the Parish of Plaquemines.
3. You must provide us with the name and address and telephone number of your employee who actually received the check and who must be willing to testify to those facts at trial. Checks received by mail cannot generally be prosecuted.
4. The check must have been exchanged for goods and services actually provided by you to the check writer.
5. Your employee must have collected proof of the check writer's identification at the time of acceptance of the check, such as driver's license information (a contemporaneous copy is preferred), birth date, and social security number.
6. You must provide the program with a copy of the legally required "10 Day Demand Letter" as well as the original certified mail return receipt.
7. Our hot check program will not accept a check for prosecution if you have entered into any agreements with the check writer concerning payment of the check, loan of the check amount or other financial transactions.
8. Checks that will not be accepted by our hot check program include those issued as part of a loan agreement, those that have been pre- or post-dated, those involving transactions for other than goods and services, and those which have been "stopped" due to disagreements between the merchant and the check writer.
9. Checks issued by a company or an individual in bankruptcy may require additional information to proceed with prosecution.
10. Checks that are not accepted by our hot check program may still be prosecuted by other sections of the District Attorney's office when sufficient proof of a criminal act exists.

HOW TO SUBMIT A WORTHLESS CHECK FOR PROSECUTION

1. Deposit all checks timely with your bank, certainly no longer than 30 days. We can not prosecute HOLD checks or checks that are part of an agreement to extend credit or loan or payment plan or checks that involve STOP payments or checks involved in a BANKRUPTCY. These checks must be pursued by a merchant through a civil court action. If you have one of these checks and you think you have been a victim of intentional fraud, please contact your local law enforcement agency (e.g. Sheriff or Police) to conduct a fraud investigation.
2. You will receive the worthless checks back from your bank, stamped by the bank to indicate the reason for non-payment: "NSF," "INSUFFICIENT FUNDS," or "ACCOUNT CLOSED."
3. Immediately contact the check writer by telephone to see if he will make good on the check. It may have been a simple mistake. Ask him to come in immediately and provide you with cash to make good the check. If he does not respond immediately, send them the "10 day demand letter" required by law.
4. If they have not responded in 10 days, and certainly no later than 60 days, bring the check to the District Attorney's Hot Check Program. You are required to produce a sworn affidavit concerning the facts of this check. A form for such is attached and it can usually be notarized in the District Attorney's Office.
5. Your sworn affidavit must be 100% truthful and accurate as it will be the basis for a judge to issue a warrant for the check writer's arrest. If it is not truthful, then you, your business, and your employees could be sued for false arrest or could end up being prosecuted for another crime such as false swearing.
6. If you receive notice from a bankruptcy court that the worthless check writer has included your check in bankruptcy, you should respond directly to the bankruptcy court. The bankruptcy court can exclude from bankruptcy any check that was involved in a criminal act. If the bankruptcy court does not exclude the check from the bankruptcy, then your efforts to collect the check could result in sanctions against you, including having you pay for the check writer's attorney's fees. Also, if the check is not excluded from bankruptcy, the District Attorney may be limited in his ability to assist you. Bankruptcy does not prevent the District Attorney from pursuing a criminal conviction but it may limit your ability to collect restitution.
7. Once the District Attorney has accepted your check for prosecution, a criminal charge will be filed and a warrant will be issued for the defendant's arrest. The defendant will be required to appear in criminal court to answer to these charges. As a result of any plea or finding of guilt, the District Attorney will ask the court to impose orders of restitution

that include all statutory fees.

8. After you have turned the check over to the District Attorney, you should refer all inquiries about the check to the District Attorney. Any effort on your part to communicate with the check writer can result in the District Attorney dismissing all charges due to your failure to cooperate with this prosecution.
9. You must keep the District Attorney informed of any address changes, as failure to keep him informed will result in any returned restitution payments being forfeited to the District Attorney.

TEN DAY NOTICE

DATE:

TO:

Your check number _____ payable to _____ dated
_____ in the amount of \$_____ and drawn on the Bank of
_____, City of
_____, State of _____, has been refused
payment by the drawee bank for the following reason:

☐ Insufficient Funds

☐ Account Closed

☐ No Account

☐ Unable to Locate

If the above-described check is not redeemed in full within ten (10) days from the receipt
of this letter, it will be referred to the Plaquemines Parish District Attorney's Office for
prosecution.

Yours truly,

Certified Mail No. _____
Return Receipt Requested

Recommended Business Hot Check Policy

1.) Establish a firm policy for your business.

Establish a firm policy regarding the cashing of checks for amounts over the cost of merchandise. If you permit this, assign the responsibility for approving such checks to specific employees.

2.) Require a valid check and valid identification.

Require a valid check, with all items of information legibly filled in, including the maker's address, place of employment and telephone number, complete date, and the same amount expressed in numerals and words. Post Office Box numbers must be accompanied by an address where the maker resides.

3.) Require a valid signature.

Require the check to be signed in the presence of an employee. If the employee can't read the maker's signature, ask him or her to write it again.

4.) Two Party Checks.

Should it be a two party check, the payee becomes the endorser and receives your money or merchandise. The endorsement written on the back of the check should appear exactly as it is on the payee line on the front. It should be legible and include an address and telephone number. If the check is presented already endorsed, ask the passer to endorse it again in your presence. It is best to avoid this type of check.

5.) Require identification and BE SURE ALL IDENTIFICATION IS CURRENT.

The information found on the Louisiana drivers license with the color picture is good. Military identification and some national credit cards are also acceptable. At least two types of identification should be required. Don't hesitate to compare the photograph or description on the identification to the person, and to compare the signature to that on the check. If the person presenting the check refuses to give identification, or there is insufficient identification, don't cash the check.

6.) Your employee should record all identification numbers on the check itself including his initials.

An employee should record all identification numbers on the check itself, and should place his initials on the check when he accepts it. There is almost no chance of conviction if the person who accepts the check cannot identify the maker of the check in court.

7.) Don't accept an undated or post-dated check.

Don't accept an undated or post-dated check, nor one that is dated twenty days previously, and never accept a check and tell the person that you will hold it for a few days.

8.) Call the bank or check other reference sources when in doubt about the validity of a check.

Recommended Business Hot Check Policy continued:

9.) **Never hold a check for over thirty days.**

Never hold a check before presenting it to the bank for payment, and if the bank returns it, take immediate action.

10.) **Don't cash checks for just anyone.**

Cash them only if the person meets your requirements - not because you met his!

District Attorney Hot Check Policy

In order for the Twenty-Fifth Judicial District Attorney to effectively prosecute offenders under the Revised Statutes 14:71, Issuing Worthless Checks and 16:15, District Attorney's Worthless Check collection fees, it has adopted the following policies effective immediately.

I.

The holder of the check must present it to the named bank for payment, even in those instances when it is known that a check will not be honored.

II.

The bank, upon returning a "Hot Check," will attach a Bank Flag or will stamp the check indicating why the check was not honored. The flag should be left attached to the check.

III.

The holder must give a ten (10) day written notice to the maker, informing him that the check was not honored by the bank and should set forth the reason as noted on the flag. A copy of the written notice must be made and retained by the complainant. The letter must state that the maker has ten (10) days after receiving this notice to make the check good. The written notice may be given in one of these ways:

- 1.) certified mail
- 2.) registered mail

Checks to Avoid

Under Louisiana Law, the District Attorney's Office will not file a criminal complaint for the following types of checks:

- 1.) Checks where ten (10) day notice was not given by certified or registered mail.
- 2.) Post dated, "Hold" or "Stop payment" checks.
- 3.) Checks drawn on out of Parish or out of State banks; unless the holder is willing to pay to transport the bookkeeper here from the state where the bank is located, if necessary for prosecution.
- 4.) Checks where the passer lives out of state.
- 5.) Checks not presented to your bank in due course of business, which should be within ten days (10) from the date on the check.
- 6.) Two party checks.
- 7.) Checks held by the merchant for more than ninety (90) days after returned will not be accepted.
- 8.) Check for which partial payment has been received.
- 9.) A check given in exchange for a returned check.
- 10.) A check received in the mail.
- 11.) A check more than one (1) year old.
- 12.) A check for less than \$5.00.

Procedures

If the maker does not pay or cause the check to be honored within ten (10) days after the mailing of the notice, then the check may be presented to the District Attorney's Office for criminal prosecution. The check must be presented in person by the holder who must furnish the following:

- The check must be accompanied with the bank flag or other proof of dishonor such as a bank stamp.
- A signed postal receipt or returned letter that is undeliverable.
- A copy of the ten (10) day letter.
- The name of the person who accepted the check and who can identify the person who passed the same.
- Complete verified address, Post Office Box numbers must be accompanied by an address where the maker resides.
- Louisiana Driver's license number.
- Military Unit and home address must be on all checks given by persons in the service.

**STATE OF LOUISIANA
PARISH OF PLAQUEMINES
VICTIM/MERCHANT AFFIDAVIT OF CRIMINAL COMPLAINT
(FOR EACH RETURNED CHECK)**

I, _____, known hereafter as Victim, do state that the following information is COMPLETE AND TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF:

Victim's name (Firm name if a business): _____
Address: _____
Telephone/Fax: _____ / _____

Employee who accepted check: _____
Employee residence address: _____
Telephone Residence/Business: _____ / _____

Check writer's name: _____
Address on check: _____
Address on Driver's license: _____
Telephone Residence/Cell: _____ / _____
Driver's license number (State): _____ (_____)
Race: _____ **Gender:** _____ **DOB:** _____
SSN: _____

Furthermore, my employees or I can identify the check writer and that this check was accepted on the date shown on the face of the attached check in payment for the merchandise, goods or services described below:

Date on check: _____ **Date passed:** _____ **Amount:** _____
Location of acceptance of check: _____
(Note: Location must be in Plaquemines Parish)

Bank check was drawn upon: _____
Bank where check was deposited: _____
Reason marked by bank for non-payment: _____
Check issued for: _____

Furthermore, that upon receiving the return of the attached check with notation of non-payment from my bank, I did cause to be mailed the attached 10 day demand letter to the above named check writer at the above address and that I did cause to be deposited this demand letter in the U.S. Mail for **CERTIFIED-RETURN RECEIPT REQUESTED** mailing on:

DATE OF MAILING: _____
Attach a copy of the letter and the return receipt

That I have received the attached return receipt or unclaimed letter back and that 10 days have elapsed from the original date of deposit of the demand letter in the U.S. Mail.

I also affirm by my initials, that that the check attached:

- _____ was not taken in payment of an antecedent debt,
- _____ was not payment against a loan or other credit arrangement,
- _____ was not payment against an open account, **NO NET BILLING**
- _____ has not been returned by the bank due to a **STOP** payment order,
- _____ was not taken by me to be held against future payment,
- _____ was not pre or post dated check,
- _____ that there has been no notice to me that this check is subject to a bankruptcy, and
- _____ that there was no indication to me at the time of this check that the check writer did not have sufficient funds to cover the amount of this check.

Furthermore, I understand that I am presenting this check to the District Attorney for criminal prosecution and affirm that my employees and I will cooperate in the prosecution of this crime. We will not request that this prosecution be dismissed nor will we accept any payments on this check. We will refer all inquiries to the District Attorney. I also agreed to notify the District Attorney of any change in address.

Signature of Victim

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 2____.

Notary Public

Commission Expires